

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PAUL YAHNE,

Plaintiff,

v.

DR. BALDERAMA, *et al*,

Defendants.

Case No. C04-5346FDB

ORDER

This matter is before the court on response of defendants' counsel to the court's order to show cause (Dkt. #33) regarding the filing of a joint status report pursuant to the court's pretrial scheduling order (Dkt. #18) and defendants' motion for summary judgment (Dkt. #32).

In its order to show cause, the court ordered defendants to file a response by no later than August 15, 2005, explaining why the court should consider its motion for summary judgment, which was filed two months after the deadline for filing dispositive motions in this case. In addition, defendants also were directed to inform the court as to the status of the joint status report that was due on June 2, 2005. The court further re-noted defendants' motion for summary judgment for consideration on September 16, 2005, pending defendants' response to the order to show cause.

Defendants' counsel filed a declaration in response to the court's order to show cause on August 15, 2005. Defendants' counsel states that in April or May 2005, he attempted on a number of occasions to have plaintiff initiate the drafting of the joint status report, and that plaintiff assured him he would do so.

1 Defendants' counsel also states that after having received no reply to a further inquiry he made in early
2 June 2005, he sent plaintiff a partially completed joint status report so that he would know what format to
3 use and asked him to fill in his portion of the form.

4 After still not hearing from plaintiff for some time, defendants' counsel discovered plaintiff was
5 incarcerated in Kittitas County Jail. Defendants' counsel states that a summary judgment motion was not
6 filed prior to the deadline for doing so, because he had been attempting to work with plaintiff on case
7 preparation. Defendants' counsel requests the court entertain defendants' summary judgment motion or, in
8 the alternative, dismiss this matter for plaintiff's failure to prosecute.

9 Before the court rules on whether to entertain defendants' summary judgment motion or whether to
10 dismiss this case for failure to prosecute, the court requires a response from plaintiff to the statements
11 made by defendants' counsel in his declaration. Therefore, plaintiff shall file such a response with the court
12 by **no later than September 8, 2005**. Plaintiff is warned, however, that **failure to so respond by that**
13 **date shall be deemed a failure to prosecute, and the undersigned will recommend dismissal of this**
14 **matter**. Accordingly, defendants' motion for summary judgment (Dkt. #32) shall be re-noted for October
15 7, 2005, pending plaintiff's response to this order.

16 The Clerk is directed to send copies of this Order to plaintiff and to counsel for defendants.

17 DATED this 17th day of August, 2005.

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21 Karen L. Strombom
22 United States Magistrate Judge
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